



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Integrate)
Procurement Policies and Consider Long-Term)
Procurement Plans.)

R.06-02-013

REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), PACIFIC
GAS AND ELECTRIC COMPANY (U 39-E), NRG ENERGY, INC., THE UTILITY REFORM
NETWORK, COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND THE
CALIFORNIA UNIONS FOR RELIABLE ENERGY ON THE DRAFT DECISION OF ALJ
BROWN ON NEW GENERATION AND LONG-TERM CONTRACT PROPOSALS AND COST
ALLOCATION

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Dated: **July 17, 2006**

**Reply Comments of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company
(U 39-E), NRG Energy, Inc., The Utility Reform Network, Coalition of California Utility Employees,
and The California Unions For Reliable Energy**

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Pursuant to Article 19 of the Commission’s Rules of Practice and Procedure, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), NRG Energy, Inc. (NRG), The Utility Reform Network (TURN), Coalition of California Utility Employees (CCUE), and the California Unions for Reliable Energy (CURE) (collectively, Joint Parties),¹ respectfully submit these reply comments on the June 20, 2006 draft decision of Administrative Law Judge Brown on New Generation and Long-Term Contract Proposals and Cost Allocation (Draft Decision).

I.

**THE COST RECOVERY MECHANISM SHOULD NOT CHANGE AFTER-THE-FACT FOR
RESOURCES THAT ARE APPROVED FOR COST RECOVERY**

In its comments, San Diego Gas & Electric Company (SDG&E) interprets the Draft Decision as stating that resources that are developed pursuant to the interim cost allocation mechanism will “transition to the new market mechanism as soon as possible[.]”² *i.e.*, the cost recovery mechanism for a resource could change during the resource’s approved cost recovery period. As discussed in the opening comments of the Joint Parties and Constellation,³ such an approach should be rejected because it would result in unacceptable uncertainty and undermine the purpose of the Draft Decision.⁴ Instead, the Draft Decision should authorize cost recovery for the duration of the commitment or at least ten years from the time that a new unit comes on-line.⁵ As discussed in the Joint Parties’ proposal, this approach is not

¹ PG&E, NRG, TURN, CCUE, and CURE have authorized SCE to submit this filing on their behalf.

² SDG&E Comments at 7.

³ Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., and Constellation Generation Group, LLC are referred to herein collectively as Constellation.

⁴ Joint Parties Comments at 3-4; Constellation Comments at 15.

⁵ Constellation, California Large Energy Consumers Association (CLECA), California Manufacturers and Technology Association (CMTA), and Sempra Global also state that the cost recovery mechanism should apply “one-time only” to the current round of procurement. *See* Constellation Comments at 6-8; CLECA/CMTA

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incompatible with the subsequent implementation of any market-based systems, such as capacity markets. “If, in the future, such a market is adopted and implemented in California, . . . generation resources developed under these transitional benefit and cost allocation policies [could] be submitted into such a market in a manner which ensures that the benefits and costs of that resource are allocated equitably among all Benefiting Customers.”⁶

II.

DETAILS OF THE PROPOSED ENERGY RIGHTS AUCTION SHOULD BE DEFERRED TO PHASE 2

Many parties support the Draft Decision’s proposal to defer details of the energy rights auction to Phase 2 of this proceeding. Nevertheless, several of those parties made proposals for features that they contend should now be adopted for the auctions. For example, the Indicated Parties⁷ argue that energy rights auctions should be conducted annually,⁸ while Mirant⁹ suggests that they could be conducted seasonally or monthly.¹⁰ Mirant also suggests that the Commission implement a single energy auction mechanism for all utilities, even though there is no evidence of the feasibility of such an approach.¹¹ AReM, CLECA and CMTA propose changes to the utilities’ procurement review groups (PRGs),¹² while the California Energy Commission (CEC) proposes that the PRGs be eliminated entirely.¹³ Several parties claim that the Draft Decision creates a “free call option” for energy rights,¹⁴ even though the nature of the “energy rights” is not yet known and the auction mechanism has not yet been developed.¹⁵

These comments illustrate why the Commission should defer such details to Phase 2. These proposals were raised for the first time in opening comments on the Draft Decision. The parties have not had an opportunity to engage in any meaningful dialog on these matters, and there is certainly no record

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Comments at 9; Sempra Global Comments at 2-3. The Draft Decision proposes the cost recovery mechanism in response to a determination of need. It is inappropriate to block the Commission’s ability to respond should such a need recur in the future.

⁶ Proposal of SCE, PG&E, NRG, AES Corporation, and TURN on Additional Policies Necessary to Support New Generation and Long-Term Contracting dated Mar. 7, 2006 at 11 (R.06-02-013).

⁷ The Indicated Parties are the Division of Ratepayer Advocates, CLECA, CMTA, City and County of San Francisco, Coral Power L.L.C., Energy Users Forum, J. Aron & Company, Strategic Energy, L.L.C., Alliance of Retail Energy Marketers (AREM) and Western Power Trading Forum.

⁸ Indicated Parties’ Comments at 3-4.

⁹ Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC are referred to herein collectively as Mirant.

¹⁰ Mirant Comments at 4.

¹¹ *Id.*

¹² AReM Comments at 11-12; CLECA/CMTA Comments at 11.

¹³ CEC Comments at 8-9.

¹⁴ *See, e.g.*, Indicated Parties’ Comments at 5-6; AReM Comments at 11; Constellation Comments at 14; CLECA/CMTA Comments at 9-10; Mirant Comments at 3; Independent Energy Producers Association (IEP) Comments at 4; Sempra Global Comments at 3-4.

to support their adoption. The Commission should adopt the Draft Decision’s proposal to defer details of the energy rights auction to Phase 2 of this proceeding and, as suggested by several parties,¹⁶ conduct workshops to explore these issues.

III.

THE DRAFT DECISION’S TREATMENT OF INDEPENDENT EVALUATORS AND REPOWERINGS IS APPROPRIATE AND CONSISTENT WITH D.04-12-048

The Draft Decision recommends that the utilities utilize a third-party independent evaluator (IE) to oversee and review requests for proposals (RFP) for new generating resources, as well as the energy rights auction.¹⁷ The Joint Parties support a requirement for IE oversight, consistent with D.04-12-048.¹⁸ However, completely outsourcing the RFOs and energy rights auctions to third parties, as suggested by Constellation, AReM, IEP and Sempra Global,¹⁹ is impracticable, not supported by the record, and inconsistent with D.04-12-048. Therefore, this proposal should be rejected.

The California Independent System Operator (CAISO) suggests that the Commission “explicitly require IOUs to give preference to repowerings as part of the RFO evaluation procedures” and establish “a specific requirement that [] parties must procure some percentage of their resources from repowered facilities”²⁰ The Draft Decision already acknowledges and reaffirms the Commission’s existing policy in support of repowerings,²¹ as set forth in D.04-12-048.²² There is no record to support a numerical set-aside, and CAISO raises an issue already addressed in D.04-12-048. Therefore, the DD should not be modified to require a numerical set aside for repowerings.

IV.

UTILITY-OWNED RESOURCES SHOULD BE ELIGIBLE FOR THE DRAFT DECISION’S COST RECOVERY MECHANISM²³

IEP, CLECA, CMTA, the Indicated Parties and NRG support exclusion of utility-owned generation from the Draft Decision’s cost allocation mechanism. Nothing in the record supports the

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¹⁵ See Joint Parties’ Comments at 5.

¹⁶ See, e.g., Indicated Parties’ Comments at 2-3; AReM Comments at 10-11; Constellation Comments at 11.

¹⁷ See Draft Decision at 28, 32.

¹⁸ The comments of NRG and the Indicated Parties are consistent with such an approach. See NRG Comments at 4 (IE should be involved in the development of evaluation criteria and review of utility conduct); Indicated Parties’ Comments at 4-5 (“The Commission should require an Independent Evaluator (IE) to oversee the IOUs’ auction of the energy component”).

¹⁹ See, e.g., Constellation Comments at 11-12; AReM Comments at 11-12; IEP Comments at 2; Sempra Global Comments at 5.

²⁰ CAISO Comments at 4-5.

²¹ Draft Decision at 3, 28.

²² See D.04-12-048 at 157-59.

²³ NRG does not join this section of these reply comments. NRG does not support allowing utility-owned resources to qualify for the Draft Decision’s cost recovery mechanism. See NRG Opening Comments at 4-5.

exclusion of any new generation from this cost recovery mechanism. No party has attempted to demonstrate that utility-owned generation is less beneficial to customers than independent generation. To exclude utility-owned generation from cost allocation would chill the development of reliable new generation by the very entities who have the longest history of providing it, who have the proven ability to raise capital to do so, and who are subject to the most comprehensive Commission regulation. As discussed in the Joint Parties' opening comments, the results of PG&E's most recent RFO demonstrate that utility-owned generation can be economically beneficial to customers without crowding out independent generation.²⁴

V.

THE DRAFT DECISION IS CONSISTENT WITH PUB. UTIL. CODE SECTION 380

AReM, CLECA, CMTA and Constellation erroneously argue that Public Utilities Code section 380 does not authorize the Draft Decision's cost allocation mechanism.²⁵ Section 380(g) clearly authorizes the Commission to allocate costs for system reliability and local area reliability to all customers on whose behalf the costs are incurred, not just utility bundled service customers.²⁶ Furthermore, section 380(b) expressly authorizes the Commission to "[e]quitably allocate the cost of generating capacity and prevent shifting of costs between customer classes."²⁷ AReM, CLECA, CMTA and Constellation ignore this dispositive language in reaching their faulty conclusion. Their argument is properly rejected by the Draft Decision.

VI.

FUTURE DEPARTING LOAD SHOULD NOT BE EXEMPT FROM THE DRAFT DECISION'S COST RECOVERY MECHANISM

Merced Irrigation District (Merced), Modesto Irrigation District (Modesto), the California Municipal Utilities Association (CMUA) and Northern California Power Agency (NCPA) variously argue for an opt-out mechanism so that publicly-owned utility (POU) customers are not subject to the Draft Decision's cost recovery mechanism.²⁸ This argument is disingenuous. No one has proposed to apply the cost recovery mechanism to *current* POU customers, whether or not located within the CAISO control area. *Future* municipal departing load should, however, be subject to the Draft Decision's cost recovery mechanism because once the decision is implemented, new generation costs will be incurred on behalf of these customers. The Joint Parties' definition of Benefiting Customers is properly limited to "others who are located or locate within the distribution service territory of an Investor Owned Utility [] but take

²⁴ See Joint Parties' Opening Comments at 6-8.

²⁵ See AReM Comments at 3-8; CLECA/CMTA Comments at 6-8; Constellation Comments at 3 n.3.

²⁶ See Cal. Pub. Util. Code § 380(g).

²⁷ Cal. Pub. Util. Code § 380(b)(2) ; *see also* Cal. Pub. Util. Code § 380(h)(4).

²⁸ See Merced/Modesto Comments at 2-8; CMUA/NCPA Comments at 2-11.

service from a local publicly-owned utility . . . *subsequent* to the commitment date for new generation, including Customer Generation Departing Load [] and Municipal Departing Load [] customers.”²⁹

Finally, the Cogeneration Association of California and the Energy Producers and Users Coalition (collectively, CAC/EPUC) argue that future customer generation departing load should be exempt from the Draft Decision’s cost recovery mechanism because of the importance of cogeneration.³⁰ CAC/EPUC made these same arguments in connection with D.03-04-030, and they were rejected by the Commission. In D.03-04-030, the Commission established that, subject to limited exceptions, customer generation departing load is required to pay all non-bypassable charges.³¹ Like future municipal departing load, future customer generation departing load should be subject to the Draft Decision’s cost recovery mechanism because, once the decision is implemented, new generation costs will be incurred on behalf of these customers. Therefore, the Draft Decision properly rejects CAC/EPUC’s argument.

VII. **CONCLUSION**

For the foregoing reasons, the Joint Parties respectfully request that the Commission adopt the Draft Decision, subject to the modifications in Attachment A to the Joint Parties’ opening comments.

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²⁹ Sempra Global also seeks immediate implementation of an opt-out mechanism. *See* Sempra Global Comments at 4. The Draft Decision properly declines to adopt such a mechanism at this time, finding that there is currently no viable mechanism for a load-serving entity to demonstrate that it is fully resourced. *See* Draft Decision at 35.

³⁰ CAC/EPUC Comments at 1-15.

³¹ *See* D.03-04-030 at 51-53.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), NRG ENERGY, INC., THE UTILITY REFORM NETWORK, COALITION OF CALIFORNIA UTILITY EMPLOYEES, AND THE CALIFORNIA UNIONS FOR RELIABLE ENERGY ON THE DRAFT DECISION OF ALJ BROWN ON NEW GENERATION AND LONG-TERM CONTRACT PROPOSALS AND COST ALLOCATION on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address.
First class mail will be used if electronic service cannot be effectuated.

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